Bonifac Lobo a/l Robert V Lobo v Wong Wooi Meng

HIGH COURT (SHAH ALAM) — CIVIL SUIT NO 22NCVC-174–04 OF 2014
MOHAMED ZAINI MAZLAN JC
2 DECEMBER 2014

Legal Profession — Practice and etiquette — Professional etiquette — Whether advocate and solicitor who was plaintiff in suit could represent himself as counsel when he had already appointed firm of solicitors to act for him — Whether plaintiff should discharge his solicitors and give notice that he would act in person if that was his intention — Whether defendant would be disadvantaged if plaintiff allowed to act as his own counsel in addition to being represented by advocate from his solicitor's firm — Whether plaintiff's wanting to act for himself breached rr 27(a) and 28(a) of the Legal Profession (Practice and Etiquette) Rules 1978 as he had pecuniary interest in subject matter of suit and was also main witness to material and disputed questions of fact at trial — Rules of Court 2012 O 64 r 3

At the hearing before the judge in chambers of two interlocutory applications in the instant matter – one, by the plaintiff to enter judgment in default of defence, and the other, by the defendant to file his defence and counterclaim out of time – the defendant raised a preliminary objection to the plaintiff, an advocate and solicitor of the High Court of Malaya, appearing together with his counsel to argue the applications. The plaintiff's suit against the defendant was for RM6.5m in damages for defamation. In his proposed counterclaim, the defendant also sought damages for defamation against the plaintiff. The defendant argued that as the plaintiff had appointed a firm of solicitors to represent him in the suit, he should not then act as counsel for himself in the proceedings. The defendant also relied on rr 27(a) and 28(a) of the Legal Profession (Practice and Etiquette) Rules 1978 ('the LP Rules'). The former rule stated that an advocate and solicitor shall not appear in any matter in which he had a direct pecuniary interest while the latter said an advocate and solicitor shall not appear in a case where he was a witness in respect of a material and disputed question of fact. The plaintiff contended that rr 27 and 28 only applied to an advocate and solicitor who acted for a party and not to one, like himself in the instant case, who was suing in his personal capacity as a litigant.

Held, allowing the preliminary objection:

(1) The plaintiff was barred from representing himself during the proceedings because he had already appointed the firm of Messrs Surend Mokhzani & Partners to represent him. The writ of summons and

statement of claim and the numerous applications and affidavits in the instant case were filed by that firm as solicitors for the plaintiff (see paras 34 & 36).

(2) Order 5 r 6 of the Rules of Court 2012 clearly stated that any person could bring and carry on proceedings either by a solicitor or in person. The plaintiff had to make a choice. Either he represented himself or he appointed a firm of solicitors to represent him. The plaintiff could, of course, choose to act for himself but he would first have to discharge Messrs Surend Mokhzani & Partners and then file a notice to act in person in Form 137 as stipulated under O 64 r 3 of the Rules of Court 2012. If the plaintiff chose to act for himself, r 30 of the LP Rules prohibited him from wearing a robe. The purpose of that rule was to ensure an advocate and solicitor who acted in person was treated as a lay person and not as an advocate and solicitor (see paras 35, 37–38).

(3) To allow the plaintiff to take part in the proceedings would contravene r 27 of the LP Rules. In this suit, the plaintiff was, amongst others, seeking damages amounting to RM6.5m. Clearly, he had a pecuniary interest. The prohibition under r 27 was to ensure advocates and solicitors remained objective when conducting their cases. Their impartiality could be called into question if they had a pecuniary interest in the subject matter of the suit (see paras 39–40).

(4) If the plaintiff was allowed to conduct the proceedings in person and at the same time be represented by an advocate from his solicitor's firm, the defendant could not be faulted for thinking he would be put at a disadvantage, more so when the plaintiff was also an advocate and solicitor. It was vital to ensure the public's trust in the courts was steadfastly guarded. No litigant should be made to feel at a disadvantage in our courts (see paras 43–44).

(5) A litigant's right to appoint an advocate and solicitor of his choice was not absolute as the courts had the ultimate right to make that determination. Proceedings had to be conducted in an orderly manner and not only be conducted fairly but be seen to be conducted fairly. An advocate and solicitor was accorded special status, for he was first and foremost an officer of the court. With that status came great responsibility, more so in an adversarial system such as ours where the courts relied on advocates to conduct proceedings fairly and honourably (see paras 41, 42 & 45).

[Bahasa Malaysia summary

Pada perbicaraan di hadapan hakim dalam kamar untuk permohonan interlokutori dalam perkara ini – satu, oleh plaintif untuk memasuki pembelaan penghakiman ingkar, dan lainnya, oleh defendan untuk memfailkan pembelaannya dan tuntutan balas melebihi masa – defendan membangkitkan bantahan awalan terhadap plaintif, seorang peguamcara dan

peguambela Mahkamah Tinggi Malaya, yang hadir bersama-sama dengan peguamnya untuk mempertikaikan permohonan. Guaman plaintif terhadap defendan adalah untuk RM6.5 juta ganti rugi untuk fitnah. Dalam cadangan tuntutan balasnya, defendan memohon ganti rugi untuk fitnah terhadap plaintif. Defendan berhujah bahawa memandangkan plaintif telah melantik sebuah firma untuk mewakilinya dalam guaman itu, dia tidak sepatutnya bertindak sebagai peguam untuk dirinya sendiri di dalam prosiding. Defendan juga bergantung kepada kk 27(a) dan 28(a) Kaedah-Kaedah Profesion Undang-Undang (Amalan dan Kesopanan) 1978 (Kaedah-Kaedah). Kaedah terdahulu menyatakan bahawa seorang peguamcara dan peguambela tidak boleh hadir dalam apa-apa perkara yang mana dia mempunyai kepentingan kewangan manakala yang terkini menyatakan seorang peguamcara dan peguambela tidak boleh hadir dalam kes yang mana dia adalah saksi berkenaan yang penting dan persoalan fakta yang dipertikaikan. Plaintif berhujah bahawa kk 27 dan 28 hanya terpakai kepada peguamcara dan peguambela yang bertindak untuk suatu pihak dan bukan kepada satu, seperti dirinya sendiri dalam kes ini, yang menyaman dalam kapasiti peribadi sebagai litigan.

Diputuskan, membenarkan bantahan awalan:

(1) Plaintif dihalang daripada mewakili dirinya sendiri sewaktu prosiding kerana dia telah pun melantik firma Tetuan Surend Mokhzani & Partners untuk mewakilinya. Writ saman dan pernyataan tuntutan dan pelbagai permohonan dan afidavit dalam kes ini telah difailkan oleh firma tersebut bagi pihak plaintif (lihat perenggan 34 & 36).

(2) Aturan 5 k 6 Kaedah-Kaedah Mahkamah 2012 jelas menyatakan bahawa mana-mana orang boleh membawa dan menjalankan prosiding sama ada oleh peguamcara atau secara individu. Plaintif hendaklah membuat pilihan. Sama ada untuk mewakili diri sendiri atau melantik satu firma untuk mewakilinya. Plaintif sudah tentu, boleh, memilih untuk bertindak bagi diri sendiri tetapi dia perlu pertamanya untuk melepaskan Tetuan Surend Mokhzani & Partners dan kemudian memfailkan notis untuk bertindak secara sendiri dalam Borang 137 seperti mana yang ditetapkan di bawah A 64 k 3 Kaedah-Kaedah Mahkamah 2012. Jika plaintif memilih untuk bertindak sendiri, k 30 Kaedah-Kaedah melarangnya daripada menjadi peguam. Tujuan kaedah itu adalah untuk memastikan peguamcara dan peguambela yang bertindak secara sendiri dilayan seperti orang awam dan bukan sebagai peguamcara dan peguambela (lihat perenggan 35, 37–38).

(3) Untuk membenarkan plaintif untuk mengambil bahagian di dalam prosiding akan menyalahi k 27 Kaedah-Kaedah. Dalam guaman ini, plaintif adalah, antara yang lain, memohon ganti rugi berjumlah RM6.5 juta. Nyata, dia mempunyai kepentingan kewangan. Larangan di bawah k 27 adalah untuk memastikan peguamcara dan peguambela kekal

objektif apabila menjalankan kes-kes mereka. Kesaksamaan mereka boleh dipanggil untuk dipersoalkan jika mereka mempunyai kepentingan kewangan dalam subjek perkara guaman tersebut (lihat perenggan 39–40).

(4) Jika plaintif dibenarkan untuk menjalankan prosiding secara sendiri dan pada masa yang sama diwakili oleh peguamcara daripada peguam di firmanya, defendan tidak boleh dipersalahkan untuk berfikir yang dia akan diletakkan pada kedudukan yang merugikannya, tambahan lagi apabila plaintif juga merupakan peguamcara dan peguambela. Ia adalah amat penting untuk memastikan kepercayaan pihak awam kepada mahkamah dipertahankan dengan kukuh. Tidak ada litigan patut merasakan dia diletakkan di kedudukan yang merugikan di mahkamah ini (lihat perenggan 43–44).

(5) Hak litigan untuk melantik peguamcara dan peguambela yang dipilihnya adalah bukan muktamad kerana mahkamah mempunyai hak mutlak untuk membuat penentuan itu. Prosiding hendaklah dijalankan dalam keadaan yang wajar dan bukan sahaja dijalankan secara adil tetapi dilihat dilaksanakan secara adil. Seorang peguamcara dan peguambela telah diberikan status istimewa, kerana dia pertamanya sekali adalah pegawai mahkamah. Dengan status itu ada bersamanya tanggungjawab yang berat, tambahan lagi dalam sistem pertentangan seperti di Malaysia yang mana mahkamah bergantung kepada peguamcara untuk menjalankan prosiding secara adil dan terhormat (lihat perenggan 41, 42 & 45).]]

Notes

For a case on professional etiquette, see 9 *Mallal's Digest* (4th Ed, 2014 Reissue) para 1688.

Cases referred to

Abdul Halim bin Abdul Hanan & Ors v Pengarah Penjara, Taiping & Ors [1996] 4 MLJ 54; [1996] 1 LNS 67, HC (refd)

Low Long Yoong & Anor v Low Kok Choon & Anor [2014] 2 MLJ 725; [2014] 4 CLJ 577, HC (refd)

Quah Poh Keat & Ors v Ranjit Singh a/l Taram Singh [2009] 4 MLJ 293; [2009] 4 CLJ 316, CA (refd)

Sinwara Sdn Bhd v Maris Housing Sdn Bhd & Ors [2003] 6 MLJ 771; [2002] 1 LNS 480, HC (refd)

Srimurugan a/l Alagan v Sol [RTD] Zakaria Salleh (unreported) (refd)

Sykt Pengangkutan Sakti Sdn Bhd v Tan Joo Khing t/a Bengkel Sen Tak [1997] 5 MLJ 705; [1997] 3 CLJ 754, HC (refd)

Legislation referred to

Federal Constitution art 8(2)
Legal Professions (Practice and Etiquette) Rules 1978 rr 3, 4, 5, 27, 27(a), 28(a), 30(a)
Rules of Court 2012 O 5 r 6, O 64 r 3, Form 137

Subithra Dali (Surend Mokhzani & Partners) for the plaintiff.
Annou Xavier (Azri Lee Swee Seng & Co) for the defendant.

Mohamed Zaini Mazlan JC:

INTRODUCTION

[1] There were two interlocutory applications that initially came up for hearing before me, namely the plaintiff's applications for leave to enter judgment in default of defence, and the defendant's application for leave to file his statement of defence and counterclaim out of time.

[2] The plaintiff, whom I shall refer to as Mr Lobo, was present in chambers together with his counsel, and so too was the defendant's counsel.

[3] However, prior to the hearing commencing, the defendant's counsel gave notice of his objection to Mr Lobo appearing as counsel in the proceedings. He then tendered his written submissions, and a bundle of authorities in respect of his objection.

[4] I then enquired from Mr Lobo and his able counsel Ms Subithra Dali, whether they have been given a copy of the submissions prior to the hearing, to which they answered in the negative.

[5] I am mindful of the need for fairness, and decided to adjourn the hearing, to enable the plaintiff's counsel time to consider the defendant's counsel's objection. I also directed counsel for both parties to exchange their written submissions and reply, and gave a date for decision.

[6] Having read and considered the submissions and authorities submitted by both parties, I allowed the defendant's preliminary objection, but made no order as to costs.

[7] The effect is that Mr Lobo was barred from appearing as counsel in this suit.

THE SUIT IN BRIEF

[8] The plaintiff is an advocate and solicitor of the High Court of Malaya. He was also a chairman of the joint management body ('JMB') of Silverpark Resort in Frasers Hill.

[9] The JMB consisted of the housing developer and 348 owners of apartment in Fraser's Hill.

[10] The plaintiff and the defendant were also elected members of the executive committee of the join management committee.

[11] Both the plaintiff and the defendant's claim against each other is for defamation. The plaintiff's statement of claim ran into 122 paragraphs. The defendant's proposed defence and counterclaim on the other hand, ran into 315 paragraphs. It is however only a proposed defence and counterclaim, as the defendant's application for leave to file them has not been disposed of yet.

[12] It would suffice for me to just state that the dispute between them is acrimonious.

THE PRELIMINARY OBJECTION

[13] Counsel for the defendant took issue with Mr Lobo appearing as counsel in this suit, based on the following grounds:

(a) he has a personal interest in the outcome of this suit;

(b) he has a pecuniary interest in the claim for damages;

(c) he is the main witness for the trial;

(d) his claim is based on the purported seven libellous emails directed to himself, and

(e) he would put himself in an embarrassing position in contravention of the Legal Profession Act 1976 ('LPA') and the Legal Professions (Practice and Etiquette) Rules 1978 ('LP Rules').

[14] Mr Lobo took umbrage with the objection. He had in particular taken offense with the suggestion, that he, who has been in practise for 34 years, had committed an act of misconduct. In fairness to the defendant's counsel, I do not think that he had any intention to doubt Mr Lobo's integrity as an advocate and solicitor. Certainly, in the proceedings before me, Mr Lobo had acted courteously, and conducted himself with decorum.

[15] Mr Lobo in resisting the preliminary objection, stated the following:

(a) that the defendant's preliminary objection was in breach of the LPA and LP Rules;

(b) that he had appeared and conducted the case a litigant, and not as counsel; and

(c) the objection runs foul of art 8(2) of the Federal Constitution .

[16] I had firstly addressed Mr Lobo's contention that the preliminary objection was in breach of the LPA, as the preliminary objection would have been a non-starter had I agreed with Mr Lobo.

WHETHER AMPLE NOTICE OF THE PRELIMINARY OBJECTION WAS GIVEN

[17] In resisting the defendant's preliminary objection, Mr Lobo firstly took issue with the manner in which the objection was done. He asserted that the defendant did not give sufficient notice, and the manner in which the objection was raised had run foul of r 11.04 of the Rules and Rulings of the Bar Council of Malaysia. This rule, which comes under Chapter 11: Court Practice, states as follows:

> 11.04 Notice of preliminary objection
>
> (1) An Advocate and Solicitor shall give written notice to the Advocates and Solicitors representing all the other parties in the litigation, of his/her intention to raise a preliminary objection at any hearing before any court, tribunal or other body.
>
> (2) Such written notice shall be given to the other Advocates and Solicitors within a reasonable time before the hearing and in any event not later than 4 clear working days before the hearing, to enable the other Advocates and Solicitors to properly prepare themselves and to secure instructions from their clients with regard to the proposed preliminary objection.
>
> (3) Such written notice shall set out the following details:
>
> (a) the nature of the proposed preliminary objection;
>
> (b) a list of authorities that the Advocate and Solicitor raising the preliminary objection intends to rely on; and
>
> (c) the proposed relief that the Advocate and Solicitor raising the preliminary objection will seek before the court, tribunal or other body.
>
> (4) Only in exceptional circumstances may an Advocate and Solicitor raise a preliminary objection during the hearing of any matter without giving the written notice required in this Ruling. In such event the Advocates and Solicitors representing the other parties are entitled to request for an adjournment of the

A preliminary objection and the Advocate and Solicitor raising the preliminary objection is precluded from objecting to such a request.

(5) Nothing in this Ruling shall affect the general discretion of the relevant court, tribunal or other body to deal with preliminary objections, including making orders for costs.

B

[18] The defendant's counsel asserted, that he had indicated an intention to raise an objection on this issue, when parties had appeared before the learned senior assistant registrar for case management.

C

[19] I had read thoroughly the authorities pertaining to preliminary objections, and conclude that the main consideration is to ensure that no one is caught by surprise. That I believe was also the intention for the Bar Council's ruling on preliminary objections. The authorities also conclude, that it is D entirely my discretion, whether to allow a preliminary objection to be carried through, and the manner in which it is to be conducted.

[20] In exercising my discretion to allow the defendant to proceed with their E preliminary objection, my primary consideration was to ensure that the Mr Lobo and his counsel, would not be at a disadvantage.

[21] As I have stated earlier, I had adjourned proceedings to allow both parties ample time to prepare. I have also had sufficient time in reading the F submissions by both parties, prior to making my decision. I am certain that no one was put at a disadvantage.

THE PLAINTIFF'S GROUNDS FOR DISQUALIFICATION

G **[22]** The defendant relied on r 27(a) and 28(a) of the LP Rules, which states as follows:

> 27 Advocate and solicitor not to appear where pecuniarily interested
>
> (a) An advocate and solicitor shall not appear in any matter in which he is H directly pecuniarily interested.
>
> 28 Advocate and solicitor not to appear in a case where he is a witness
>
> (a) An advocate and solicitor shall not appear in Court or in chambers in any case in which he has reason to believe that he will be a witness in I respect of a material and disputed question of fact, and if while appearing in a case it becomes apparent that he will be such a witness, he shall not continue to appear if he can retire without jeopardising his client's interest.

[23] The defendant cited numerous authorities in support, which I shall set out in summary:

(a) *Sykt Pengangkutan Sakti Sdn Bhd v Tan Joo Khing t/a Bengkel Sen Tak* [1997] 5 MLJ 705; [1997] 3 CLJ 754 (HC)

Abdul Malik Ishak J (as he then was), referred extensively to decided cases within our jurisdiction and other jurisdictions, and came to the conclusion that the right of an individual to be represented by an advocate and solicitor of his choice is not absolute, and that is the court that has the ultimate right to make that determination. His Lordship barred the plaintiff's counsel Mr Muthusamy, and his firm, from representing the plaintiff, as the former was personally involved, and could be called as a witness;

(b) *Abdul Halim bin Abdul Hanan v Pengarah Penjara, Taiping* [1996] 4 MLJ 54; [1996] 1 LNS 67 (HC)

in this case, the affidavit in support of the originating summons was affirmed by the applicant's counsel. By way of obiter, Kang Hwee Gee J referred to r 28 of the LP Rules, and stated that it is against ethics for a counsel to affirm an affidavit containing substantive allegations for his client, and later plead the client's case in court. His Lordship also remarked that the counsel should have left the conduct of the case to another counsel;

(c) *Sinwara Sdn Bhd v Maris Housing Sdn Bhd & Ors* [2003] 6 MLJ 771; [2002] 1 LNS 480 (HC)

Abdul Wahab J allowed the defendants counsel's preliminary objection on the plaintiff's counsel appearing for the case, as the latter was apparently an owner of one of the lots for the development in this case. His Lordship emphasised on the need for counsel to be objective, and that this could not be achieved, if the counsel has a pecuniary interest in the suit. His Lordship further stated that '... failure to act in an objective manner contributes significantly to confusing the issues, making litigation more lengthy and expensive and resulting in a decision that is less right, fair and just than it could have been'. [774]; and

(d) *Quah Poh Keat v Ranjit Singh a/l Taram Singh* [2009] 4 MLJ 293; [2009] 4 CLJ 316 (CA)

In this case, the firm of Messrs Lee Hishammuddin Allen & Gledhill was disqualified by the High Court from representing the appellant, on the basis that two of their partners were involved in the incident that occurred prior to the suit being commenced. The Court of Appeal upheld the High Court's decision. Suriyadi JCA (now FCJ), in delivering the Court of Appeal's decision, stated that although r 28(a) does not state expressly that any disqualification of an advocate and solicitor is founded

A on the premise of wanting to avoid any ethical consternation, His Lordship was of the view that that was the underlying purpose of this rule [304].

THE REBUTTAL

B

[24] Mr Lobo had in his submissions, and I pause here to note that he had signed the submissions in his own name, but filed it through his solicitors, namely Messrs Surend Mokhzaini & Partners, clarified that he is acting for himself, and not in the capacity of an advocate and solicitor.

C

[25] This assertion however, was disputed by the defendant's counsel. He claimed that it was made known during case management before the learned senior assistant registrar, that Mr Lobo would appear as counsel, and that he had then made it known that he intends to raise an objection.

D

[26] In referring to the authorities cited by the defendant's counsel and the LP Rules, Mr Lobo highlighted that they pertain to counsel who had acted for their client, and that they were not in respect of one who had represented himself. He went on to postulate, that if the LP Rules were meant to include a litigant in person, then a counsel would not be able to act for his client, as the fees charged would be a pecuniary interest.

E

[27] Mr Lobo cited an unreported decision by T Selventhiranathan J (as he then was),in the case of Kuala Lumpur High Court Suit No S7–23–98 of 2007; *Srimurugan a/l Alagan v Sol [RTD] Zakaria Salleh.* Although the facts of the case were not cited, the relevant paragraph in His Lordship's 'Contemporaneous Oral Grounds of Judgment' stated as follows:

F

> On enclosure (37) proper, I am of the view that rules 27 and 28 of the Legal Professions (Practice and Etiquette) Rules 1978 are only applicable to an advocate and solicitor who acts for a party as such, and do not prevent an advocate and solicitor from acting in person, if he elects to do so. These rules have to be so construed as otherwise an advocate and solicitor who sues or is sued in this personal capacity will be at a disadvantage vis a vis the ordinary individual who can sue on his own or defend himself on his own.

G

H

[28] Mr Lobo also relied on O 5 r 6, and O 64 r 3 of the Rules of Court 2012, and also r 30(a) of the LP Rules to assert his rights to commence and carry on proceedings in person.

I

[29] Finally, Mr Lobo submitted that distinguishing an advocate and solicitor and a lay person, will run foul of the anti-discrimination provision of art 8(2) of the Federal Constitution. I have difficulty in appreciating this particular submission, and shall not address it.

THE GROUNDS FOR DISQUALIFICATION

[30] This is indeed a novel situation. This is a case of whether Mr Lobo, an advocate and solicitor, should be allowed take part in the court's proceedings as counsel, or as he claims, to represent himself, when he has already appointed a firm of solicitors.

[31] All the cases that have been cited, concerns advocates and solicitors that were disqualified from acting for their clients.

[32] The only case on similar facts that I had come across was that of *Low Long Yoong v Low Kok Choon* [2014] 2 MLJ 725; [2014] 4 CLJ 577 (HC). In that case S Nantha Balan JC made known his concern that the first plaintiff, Mr Sunny Khoo, is also an advocate and solicitor, and that his firm was also on record as the solicitors for the plaintiffs. The learned judicial commissioner remarked that Mr Sunny Khoo did not appear as the plaintiff in person, and was appearing as counsel, and made known his concern that this could run foul of r 3, 4, 5, 27 and 28 of the LP Rules.

[33] The learned judicial commissioner was of the view that Mr Sunny Khoo should not appear as counsel, as he has a pecuniary interest in the matter, and would be a material witness should the matter proceed for trial. Unfortunately, since the defendants did not take any issue with Mr Sunny Khoo appearing as counsel, the issue was not ventilated further.

[34] Here, Mr Lobo was not prohibited from being represented by the solicitors of his choice, namely Messrs Surend Mokhzani & Partners. I had merely barred him from representing himself during proceedings. This is by virtue of the fact that he has already appointed the firm concerned to represent him.

[35] Order 5 r 6 of the Rules of Court 2012 clearly states that any person may begin, and carry on proceedings, either by a solicitor or in person. Mr Lobo needs to make a choice. Either he chooses to represent himself, or appoint a firm of solicitors to do so.

[36] In this suit, the writ of summons and statement of claim, the numerous applications and affidavits were filed by Messrs Surend Mokhzani & Partners as solicitors for Mr Lobo.

[37] Mr Lobo could of course choose to act for himself, but he would firstly need to discharge Messrs Surend Mokhzani & Partners, and then file a notice

to act in person in Form 137, as stipulated under O 64 r 3 of the Rules of Court 2012.

[38] In the event that Mr Lobo chose to act for himself, r 30 of the LP Rules prohibits him from wearing a robe. The purpose for this rule is to ensure that an advocate that acts in person, is treated as a lay person, and not as an advocate or solicitor.

[39] I am also of the view that to allow Mr Lobo to take part in proceedings would contravene r 27 of the LP Rules. In this suit, Mr Lobo is amongst others, seeking for damages amounting to RM6,500,000. Clearly he is pecuniarily interested.

[40] In my considered opinion, the prohibition under r 27 is to ensure that advocates and solicitors remain objective when conducting their case. Their impartiality could be called into question, if they have a pecuniary interest in the subject matter.

[41] An advocate and solicitor is accorded special status, for he is treated first and foremost as an officer of the court, and with that status, it carries great responsibility, more so in an adversarial system such as ours, where the courts rely on advocates to conduct proceedings fairly and honourably.

[42] I am also mindful of the need for proceedings to be conducted in an orderly manner. It should not only be conducted fairly, but be seen to be conducted fairly.

[43] If Mr Lobo is to be allowed to conduct proceedings in person, and at the same time be represented by an advocate from his solicitors' firm, the defendant would not be faulted to think that he would be put at a disadvantage, more so when Mr Lobo is also an advocate and solicitor.

[44] It is vital to ensure that public's trust in our courts be steadfastly guarded. No litigant should be made to feel at a disadvantage in our courts.

[45] As stated in the case *Sykt Pengangkutan Sakti*, the rights of a litigant to appoint an advocate and solicitor of his choice is not absolute, as the courts have the ultimate right to make that determination.

[46] I had for these reasons, allowed the defendant's preliminary objection, but made no order as to costs.

Preliminary objection allowed.

Reported by Ashok Kumar